

MINUTES
WV RACING COMMISSION
Tuesday, April 21, 2015
WV Lottery Conference Room

The WV Racing Commission met on April 21, 2015 to conduct business and consider administrative matters. Roll call was taken and present was Chairman Jack Rossi. Commissioner Greg McDermott and Commissioner Bill Phillips were present via conference call. Counsel was represented by Kelli Talbott.

Approval of March 17th and April 1st minutes

The Commissioners and legal counsel received the minutes from the March 17th and April 1st meetings prior to this meeting. Commissioner Phillips stated he had a correction to be made to the April 1st minutes. Chairman Rossi stated the correction would be made. Motion was made by Mr. Phillips to approve the minutes, seconded by Mr. McDermott. Motion passed.

Executive Director's Report
John Myers

John Myers stated the FOIA report, which is a 3 month running report, shows 12 requests received in March and all 12 have been completed.

A summary has been provided by Kelli Talbott on the new Thoroughbred Rules for 2015. Those changes were made and will become effective June 28th.

A webinar was held with the Stewards, led by Kelli Talbott, in which discussion was had concerning a form that Kelli Talbott developed and was going to recommend the Commission use going forward for the Stewards to issue Rulings, and is now a requirement for them to be put on our website. The Stewards will now be using this form.

Kelli Talbott has some recommendations for the 2016 Rule changes and things the Commission may want to consider for that year. The timetable from the Secretary of Revenue's office gives a deadline of May 4th so there is a sense of urgency in some items that may be discussed today.

Larry Carraher has put together a handout regarding software that Mr. Myers hopes to be able to use to distribute the agenda with the information that is included in the binders going forward. Mr. Myers has asked Larry to contact each of the Commissioner's after this meeting to discuss their preferred way to receive this information.

Mr. Phillips stated he would like to know if Mr. Myers attended the interim meetings where possibly the Senate Concurrent Resolution 62 may or may not have been discussed, and if he did not, could he put together a briefing for the Commissioners as to who's been appointed to the select Committee, if in fact that has occurred, and how that study will be managed and how it will be staffed? Mr. Myers replied he does not believe they have made all of those decisions yet but his understanding is that it's going to be a joint thing and be chaired by the House and Senate Finance Chairs, but at this point as to whom else is involved, he has not been able to get that information. Chairman Rossi stated he has inquired about this and he doesn't think any appointments have been made yet.

Auditor's Report Becky Carnefix

Becky Carnefix stated the capital improvements submitted for reimbursement and paid for the month consisted of Mountaineer submitted 2 projects for reimbursement and was paid a total of \$64,124. The details of the projects paid are in the binders.

Also included in the Commissioner's binders was a quarterly status report, as of March 31, 2015, for capital improvements on the outstanding projects approved and the funding available for each of the four tracks.

The Supplemental Purse Awards 4QFY14 claims, covering race dates April 2014-June 2014, were processed for payment last week. Mountaineer's total eligible claims were \$69,537.10 and funds available were \$64,194.80, resulting in a payout of 9.231%. Charles Town's total eligible claims were \$413,986.20 and funds available were \$75,725.79, resulting in a payout of 1.829%.

The Commissioners were also provided with a copy of her audit schedule for the remainder of FY'15 for their review. Motion was made by Mr. McDermott to approve the audit schedule, seconded by Mr. Phillips. Motion passed.

Accountant's Report Joe Moore

Joe Moore stated live handle has increased nearly 60% compared to February, but is down 20% compared to last March and down 8.8% YTD compared to FY14. Export handle is down 19% compared to FY14. Simulcast handle is up 12% compared to March 2014, yet is down 3.6% compared to FY14.

The Commission is through three quarters of its fiscal year and the three administrative funds have collected approximately 60% of budgeted revenue for the year and expensed nearly 58% of budgeted expenses for the year.

The Commission has now received both Thoroughbred tracks contributions to the backstretch pension fund for the current year.

Legal Update, Attorney General's Office

Kelli Talbott stated the main thing she has been working on since the last meeting is getting the Thoroughbred Rule finalized. It will go into effect on June 28th. She has been working with Larry Carraher to make sure the Rule is going to be printed, and there was a summary of changes she drafted to be put on the website.

She presented a webinar to the Stewards in anticipation of the new rules going into effect and the main thing they discussed is how their medication rulings are going to look in light of the fact they will be assessing points now for medication violations and they will be looking at any accumulated points that permit holders have from past rulings or other states and they are going to have to apply that point system in their ruling. She prepared a form that she and Larry Carraher are still working on, but is a form the Stewards can use to fill in certain information pertinent to each case and basically has the outline of the information it needs to contain and the places for the points to be put in and assessed.

The Commission has a couple of cases in which the hearings have been held and she anticipates hearing examiner decisions on those cases in the next couple of weeks. The Reynolds case has been fully briefed in the Supreme Court at this point and we are now just waiting for the Supreme Court to do something with it.

Restoration of America's Wire Act (Information Only)

John Myers stated this began last year when the first version of this bill was filed. It is basically a bill aimed at prohibiting online poker across state lines. Commissioner Phillips wanted to know what could the potential effect of this be on racing as we go forward? The bill, as it's written, does not appear to effect traditional betting on racing as we've known. The current bill does exempt racing wagering as we know it. However, a lot of this does have effects on Lottery, which as we know, racetrack video lottery and table games provide a large portion of the purses for racing the way it is set up currently. This bill could affect the introduction of new games, things we might be able to do for additional revenue sources in the future, therefore, making competition for state dollars even tougher. Some potential concerns from the Lottery standpoint are the continued existence of their central system that monitors total play on the video slot machines and calculates the amount of state tax due the state, and the continued existence of the Wide Area Progressive jackpots that are currently allowed. This is a bill that will continue to be monitored.

Changes to the WV Thoroughbred Rules for 2016

An outline has been included in the Commissioner's binders that include changes that should be changed for the upcoming year. With the short timeframe, Mr. Myers said he and Kelli Talbott have been concerned with trying to get a big group together again and are looking for some guidance from the Commissioners as to whether it will be ok to proceed with these changes. Kelli stated the deadline of May 4th is to give Secretary Kiss a rough outline of what is going to be proposed not to give him actual rule language. If the Commissioner's wanted to get the constituents on a conference call to discuss these changes, we could probably get a little leeway from Secretary Kiss as far as giving him the rough overview.

The items she has included are just Model Rule issues, things that we don't have in our rules and have either been done by RCI in the interim or we've missed out in some respect. One of the items on the list is a Stewards recommendation, not a Model Rule issue, and it is who can they accept physical exam reports from for jockeys? They are having issues with nowadays it's mostly nurse practitioners or physician's assistants that are providing those documents so they want to add language that allows them to accept those medical exams from those medical providers. The claiming rule is something that the Charles Town horsemen sent in. These are the items she is aware of for proposed rule changes and it is up to the Commission if they want her to have limited discussions with the stakeholders about any additional changes to add to this list. Her only reservations are due to the short deadlines and the study of racing that is going to be going on during this session, she thinks it should be fairly limited as to what they do. Chairman Rossi stated he thinks we should pursue having a constituent conference call. Mr. Phillips and Mr. McDermott both agreed. Mr. Phillips stated he is at the RCI meeting currently and the Model Rules Committee is to meet Wednesday morning and he will let John and Kelli know what happens. John Myers stated he will work with Kelli and get a conference call set up with the constituents.

Changes to the WV Pari-Mutuel Rule for 2016

John Myers stated this is a change to the Pari-Mutuel rule that would allow a Pick 6 bet. This was distributed by Erich Zimny from Charles Town after the last stakeholder meeting. This can be discussed on the same conference call as the Thoroughbred Rules. Kelli Talbott stated she is open to other amendments to the Pari-Mutuel rule as well. She added, however, the

Pari-Mutuel wagering rules apply to both dog and horse racing so the greyhound constituents will have to be reached out to as well in these discussions.

Approval of the West Virginia Derby Marketing and Promotion Expense

John Myers stated this is a request from Mountaineer for \$200,000 to be used for promotional activities in connection with the 2015 WV Derby. A summary of the expenses is included in the Commissioner's binders. There is \$215,000 available so funding is adequate for this request. Mr. Phillips asked how does the \$200,000 marketing figure compare to 2014? Joe Moore replied he believes the approved marketing budget for the 2014 race was around \$400,000 and this fund is funded by racetrack video lottery so each year you see a decline in the available funding for their advertising budget and their \$750,000 race purse. He believes this request is a little less than half of what their request was last year for advertising expense for the Derby. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Capital Improvement Request – Mountaineer Casino, Racetrack and Resort - \$56,247.62 for remodeling the men's and women's restrooms in lodge side OTB area

Capital Improvement Request – Mountaineer Casino, Racetrack and Resort - \$45,212.18 for emergency purchase of a 480V transformer and replacement of underground feeds to grandstand

Capital Improvement Request – Mountaineer Casino, Racetrack and Resort - \$10,388 for replacing two 65 gallon water heaters on the backside

Capital Improvement Request – Mountaineer Casino, Racetrack and Resort - \$275,859.70 for paving the backside

Becky Carnefix stated the first request is to remodel the men's and women's restrooms at the betting area in lodge side OTB area with a total cost of \$56,247.62.

The second request is for an emergency purchase, which has already been made, of a 480V transformer to power the grandstand and underground feeders to the transformer and the total cost of this request is \$45,212.18.

The third request is for two new 65 gallon water heaters on the backside and the total cost of the request is \$10,388.

The fourth request is to pave the backside, which includes paving the roadway from security to the rec hall which is used for horsemen traveling and parking in the horsemen's lot and going to the rec hall and that request totals \$275,859.70.

The total for all four requests is \$387,707.50. She has reviewed all four requests and recommends each for approval.

Mr. Phillips asked if the backside paving request was for the entire backside or just for the specific areas? Becky Carnefix replied it is for the areas that have been designated and for the roadway on the backside.

Motion was made by Mr. McDermott for approval of the four requests, seconded by Mr. Phillips. Motion passed.

Hearing examiner's recommended decision regarding Steve Sarras

Kelli Talbott stated this case involved two rulings at Wheeling Island the judges issued against Mr. Sarras for two late scratches of two different dogs. The dogs had been moved from Wheeling Island property and were not available to race and the permit holder did not make proper notification of that and they had to be late scratched from two different races and the judges issued two \$150 fines and Mr. Sarras appealed. The recommended hearing examiners decision is to uphold the two \$150 fines against Mr. Sarras. Motion was made by Mr. McDermott to adopt the recommended decision of the hearing examiner, seconded by Mr. Phillips. Motion passed.

Thoroughbred Owner Permit Application for Melissa Gray

John Myers stated Ms. Gray has applied for an owner's license and she has a previous felony conviction. The new form that is being used for discussion and review and investigation of these permit applications has been provided in the binders for the Commissioner's review. The first section tells the applicant's name and what type of permit they are applying for and also gives a brief summary as to what was found in doing the background check. The court records are also included with this form. The form has been reviewed by the Stewards and the Stewards have also done an interview with Ms. Gray and have recommended a permit be granted to her. Mr. McDermott commented this format is outstanding and the information provided was very thorough and helpful. Chairman Rossi echoed Mr. McDermott's comments. Motion was made by Mr. McDermott to adopt the recommendation of the Board of Stewards and that the applicant be granted the permit with the stipulation that was provided, seconded by Mr. Phillips. Motion passed.

Request to change status to allow Scooter Davis to apply for a license

John Myers stated this is not a request he thinks this Commission would want to take up directly. Our rule is to approve the licensure or not approve it and with that being the case, he thinks Mr. Davis should either apply or not apply so he recommends we have Counsel write a letter back to his attorney stating that Mr. Davis should apply for a license or he should decide not to apply and the Commission will deal with the circumstance at that time. Chairman Rossi stated he tends to agree with what John Myers just stated. Mr. McDermott said he agrees with Chairman Rossi and was a bit puzzled by the nature of the request. Mr. Phillips stated he also agrees and it should go through the normal procedure. Motion was made by Mr. McDermott to have Kelli Talbott write a letter to Mr. Davis' attorney, seconded by Mr. Phillips. Motion passed.

Hearing examiner's recommended decision regarding Dick Watson

Kelli Talbott stated this is the second ejection proceeding for Mr. Watson. The recommended decision is for Mr. Watson be allowed to re-enter Charles Town racetrack. Mr. McDermott stated the information they received was very thorough and having reviewed the information in its entirety he made the motion to adopt the recommended decision, seconded by Mr. Phillips. Motion passed.

2016 Purse Analysis

Chairman Rossi stated this was a request made by Mr. Phillips. He thinks this is an excellent analysis and asked John Myers to comment more on it. Handouts were distributed to people in attendance at the meeting.

The first handout depicted the source of purse funds for the year, the statutory amount and the reduction as a result of HB 101 at the end of last year. For racetrack video lottery, that amount is going to be approximately \$24,000,000 across all four tracks for the upcoming year. For table games, that amount is going to be approximately \$2.3 million for the year. The appropriated amount that comes from the Governor's Budget Bill is approximately \$12,159,000. Pari-mutuel purse funds are projected at \$9.6 million. Total projected purse funds for the year are approximately \$49 million.

Looking at that number and trying to estimate what is the number of race days that would be required or needed in order to keep what we have for the purses that were paid out last year is also depicted on the handout, along with the amount of purses for each race day. An example would be at Mountaineer, the average purse was about \$115,000 per day in 2014 and to achieve the same thing in 2016 they would have to go down to around 130 days. The same applies across the board for the other tracks using the projected numbers. Charles Town has paid, in 2014, an average daily purse of \$160,000 so they would have to race somewhere between 135 and 140 days to achieve that. The graph also shows what a daily average purse for 2015 would be based on the numbers we have and what we anticipate will be requested for reduced days. The big races, for example the WV Derby, the Charles Town Classics and the Breeders Classics, were removed from these figures due to skewing the numbers.

Two other graphs were explained in detail, one for thoroughbred and one for greyhound, depicting purse contribution and live handle.

This analysis, overall, basically shows we have some work to do over the next few months. A place to begin would be to decide what level of purse everybody is going to pay. He has shared this information with Secretary Kiss and he has agreed to give this some consideration and, at our request, some flexibility by the Statute, which means this will have to be opened back up next year, but he has requested to be given that consideration this year so this Commission has the ability to change the number of race days without having to go through some of the restrictions we currently have.

Mr. Phillips stated he would like to thank Mr. Myers for this analysis and it obviously confirms the resolution of 185 days as being probably a high number based on this analysis. This information also should be of value once the Select Committee is established and they begin looking at their study for racing and gaming in general. Chairman Rossi stated that he too thinks this information is very valuable and should probably proceed and do it on the greyhounds as well.

Nelson Robinson stated at the last special meeting he believes the Racing Commission took a position in modifying Charles Town's racing days and so that Mountaineer knows going forward, because they will probably come back at some point in time on the racing days issue, he thought someone told him the Commission used §19-23-6 under the language of plenary power authority, is that correct? Kelli Talbott replied that is essentially correct. Mr. Robinson then asked, so that Mountaineer knows going forward, if they were making a request, what plenary power would they refer to? Kelli Talbott replied it's not a specific section of that Code, it's the plenary authority that's recognized.

Public Comments

Troy Hendricks stated they tried to address this in the Legislative Session and it ran out of time, the reduction to 185 race days. It would be impossible to survive at the 130 mark so he's hoping the Commission will look at something in the 180-185 day area.

Next meeting – tentatively May 19, 2015

The next meeting is tentatively set for May 19th. John Myers and Kelli Talbott will set up a conference call to meet the schedule Secretary Kiss has set for rule changes.

Adjournment

Motion was made by Mr. McDermott to adjourn, seconded by Mr. Phillips. Meeting adjourned.